

Internal Revenue Service

Number: **202008003**
Release Date: 2/21/2020
Index Number: 9100.02-04

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-113920-19

Date:
November 14, 2019

In Re:

LEGEND:

Taxpayer =

Taxable Year=

Firm =

Date A =

Date B =

Dear :

This is in response to a letter dated June 13, 2019, submitted on behalf of Taxpayer, requesting extensions of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a late election under § 48(a)(5) of the Internal Revenue Code (Code) to claim the investment tax credit (ITC) determined under § 48 in lieu of the production tax credit (PTC) under § 45 with respect to certain renewable energy facilities for Taxable Year.

FACTS

According to the information submitted, Taxpayer represents that the facts are as follows.

Taxpayer is a partnership formed with a tax equity investor, who entered into the partnership with the expectation of obtaining an ITC by means of making a § 48(a)(5) election (ITC election) to treat qualified facilities as energy property.

In order to file the forms needed to make the ITC election Taxpayer engaged Firm for return preparation services, which included preparing and filing Form 1065, U.S. Return of Partnership Income, well as Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns (Form 7004), on behalf of Taxpayer, which would have extended the due date of Taxpayer's initial Form 1065 to June 15, 2019.

On Date A, Taxpayer received notice from the Internal Revenue Service that the Taxpayer's Form 7004 and Form 1065 had been received on Date B, after the due date for the Form 1065, and that the Form 1065 was therefore late and that Taxpayer was unable to make the election under § 48(a)(5). After receiving this notice, Taxpayer contacted Firm, who ultimately advised Taxpayer to seek relief under Treas. Reg. § 301.9100-3.

Firm has asserted, under penalty of perjury, that it had intended at all times to timely file Form 7004, which would have extended the due date of the Taxpayers election, believes that it timely filed the Form 7004, but cannot locate proof of certified mailing of the Form 7004 to the Internal Revenue Service to demonstrate such timely filing.

LAW AND ANALYSIS

Section 48(a)(5) provides, in part, that a taxpayer may irrevocably elect to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to certain renewable facilities.

Section 48(a)(5)(A) provides that qualified property that is part of a qualified investment credit facility shall be treated as energy property for purposes of § 48, and that the energy percentage with respect to such property shall be 30 percent. Section 48(a)(5)(C) provides that taxpayers may elect to treat qualified facilities (within the meaning of § 45) as qualified investment credit facilities. Section 48(a)(5)(B) provides that no credit shall be allowed under § 45 for any taxable year with respect to any qualified investment credit facility.

Notice 2009-52, 2009-25 I.R.B. (1094), provides, in part, that an election to treat a qualified facility as a qualified investment credit facility and claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 will be effective if it is made in the manner and time set forth in the notice.

Section 2.01 of Notice 2009-52 provides, in part, that to make the election with respect to a qualified facility, a taxpayer must claim the energy credit with respect to

qualified property that is an integral part of the facility on a completed Form 3468 and file such Form with the taxpayer's income tax return for the year in which the property is placed in service.

Section 2.03 of Notice 2009-52 provides that the election to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 must be made on a timely filed return (including extensions) for the taxable year in which the facility that is to be treated as a qualified investment credit facility is placed in service.

Section 301.9100-1(a) provides that the regulations under this section and §§ 301.9100-2 and 301.9100-3 establish the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. An extension of time is available for elections that a taxpayer is otherwise eligible to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides that requests for relief subject to this section will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or aware of all relevant facts.

Section 301.9100-3(b)(3)(ii) provides that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election.

The § 48(a)(5) election is a regulatory election within the meaning of Regulation § 301.9100-1(b), because the due date for making the election is set forth in Notice 2009-52. The § 48(a)(5) election is not expressly excepted from 9100 Relief, and there is no alternative late election relief procedure provided by a statute, regulation or other published guidance.

CONCLUSION

Based solely on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 48(a)(5) for Taxable Year to elect to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to its renewable facilities.

The election under § 48(a)(5) must comply with all of the requirements of Notice 2009-52.

In making the elections, Taxpayer should also attach copies of this letter to the amended returns for Taxable Year. We have enclosed copies of this letter for that purpose.

This letter ruling does not grant an extension of time for filing Taxpayer's federal income tax return for Taxable Year.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above. In particular, we express or imply no opinion on whether Taxpayer satisfies the requirements of § 48(a)(5), or other applicable portions of §§ 48 and 45 and whether the credit amount claimed is correct.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information submitted and representations made by Taxpayer and Taxpayer's representatives and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Patrick S. Kirwan
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes